

## § 216.120

holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

### Subpart J [Reserved]

## Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities

SOURCE: 74 FR 6242, Feb. 6, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: 74 FR 6242, Feb. 6, 2009, subpart K, consisting of §§ 216.120 through 216.129 were added, effective Feb. 7, 2009 through Feb. 7, 2014.

### § 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the 30th Space Wing, United States Air Force, and those persons it authorizes to engage in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of the regulations in this subpart,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year period of the regulations in this subpart,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

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(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*); California sea lions (*Zalophus californianus*); northern elephant seals (*Mirounga angustirostris*); and northern fur seals (*Callorhinus ursinus*).

### § 216.121 Effective dates.

Regulations in this subpart are effective from February 7, 2009, through February 6, 2014.

### § 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 and 216.127, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.120(b) and is limited to Level B Harassment.

### § 216.123 Prohibitions.

Notwithstanding takings specified in § 216.120 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.127, no person in connection with the activities described in § 216.120 may:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.127.